

MINUTES

WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting held in Commissioners Meeting Room,
Third Floor, Historic Court House,
Boonville, IN

Tuesday, November 13, 2012, 6:00 PM

MEMBERS PRESENT: Guy Gentry, President; Mike Moesner, Brad Overton, Jeff Valiant, Marlin Weisheit and Jeff Willis.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer and Molly MacGregor, Staff.

MEMBERS ABSENT: Amanda Mosiman

Roll call was taken and a quorum declared present.

PLEDGE OF ALLEGIANCE: A moment of silence was held followed by the Pledge of Allegiance.

MINUTES: Upon a motion made by Brad Overton and seconded by Jeff Valiant, the Minutes of the last regular meeting held October 8, 2012, were approved as circulated.

RULES OF PROCEDURE - Amendment

Mrs. Rector said she was going to change the Rules for the cease and desist order when someone was in violation of the Zoning Ordinance; however, there was further discussion on adding in some more cease and desist so if they don't mind to continue it to the next meeting she will send them out some more information.

Brad Overton made a motion to table this item to the next meeting. The motion was seconded by Marlin Weisheit and unanimously carried.

The President explained the Rules of Procedure to the petitioners.

SUBDIVISION FOR PRIMARY PLAT APPROVAL:

PP-12-08 – Orchard View PUD Sec 1C by Allan R. Holweger 6.46 acres located on the E side of Taylor Dr. 0' SE of the intersection formed by Ande Dr. & Taylor Dr., Ohio Twp. Orchard View PUD 1B. *Advertised in the Boonville Standard November 1, 2012.*

Jim Biggerstaff, Utilities Consulting and John Mattingly were present.

The President called for a staff report.

Mrs. Rector said they have all the return receipts from certified mail to the adjacent property owners except they have a waiver of notice from Michael and Mary Jo Fitzsimmons. She stated this was because they were not on the record yet but it was found out the transfer of property did take place and so they signed the waiver. She said this property is zoned PUD/C-4 and there is no flood plain. She said the change on this plat is to show one new building on the PUD and to show the relocation of a previously approved building. She said the County Commissioners ruled that they would not require any improvements for Vann Road, Ande Drive or Taylor Drive and the Drainage Board ruled there would be no additional drainage plans be required from the previously approved plans. She said Newburgh has sewer available for Building 8 only as long as a lateral is extended across the street installing a 50'-12" casing pipe and 65'-6" PVC lateral. She said they will not issue any Improvement Location Permit for that building until such time they obtain a Newburgh Sewer permit. She added that Chandler has sufficient water capacity for the new building. Mrs. Rector said two months ago Orchard View PUD 1B was approved. She added the purpose of that plat was to add building 7. She said this plat is taking section 1B and changing the location of building 7 and adding building 8. She said Section 1B showed building 7 to be 22 feet off the property line but when the building was constructed, they "flipped" the design of the house and one corner of the house is 22.6 feet off the property line and the northern corner is 14.6 feet off the property line. She said Mr. Mattingly is doing the construction of the building and he can explain to them why they flipped the house and why it is closer. She said the plat is in technical conformity with the Subdivision Control Ordinance.

Guy Gentry asked if there is going to be any other concrete or parking for that driveway or are there restrictions already in place that there is no outside parking.

John Mattingly said they are going to make a wider driveway.

Guy Gentry said wider is not...wider so it can be deeper.

John Mattingly said it is deep enough that the car will be out of the sidewalk; the sidewalk will be clear. He said he is building it for a lady who has a small Lexus.

Jim Biggerstaff said there is another ten feet from the right of way to the street so that makes it fifteen feet plus ten feet. He said the dimensions are from the right of way line.

Guy Gentry said when he drives by there it doesn't look very deep.

John Mattingly said they have measured it and measured her car and they have plenty of room to pull in there or for company to pull in there. He said she is a single lady.

Morrie Doll asked if the car will be in the sidewalk.

John Mattingly said it will not be in the sidewalk.

Guy Gentry asked if Building 8 is the same size as Building 7.

John Mattingly said it is the same size but it will be further back off the road. He added it is a single unit instead of a duplex.

Ascertaining there were no further questions from the Board and being no remonstrators present, the President called for a motion.

Marlin Weisheit made a motion to approve PP-12-08. The motion was seconded by Brad Overton and unanimously carried.

Mrs. Rector stated for the record that Mr. Holweger is not here for this meeting but he was here for the other two meetings and he has an abscessed tooth and she told him he didn't need to stay for this meeting.

OTHER BUSINESS:

Formal Complaint ~ Frank Schnell dba FIT Tire Recycling, OWNER OF RECORD: J.H. Service Co., Inc., by Ronald Witt, Sr., Pres. ~ Tire storage ~ Progress Report.

Mrs. Rector said they should all have a copy of the email from the Schnell's. She said it says due to the fathers' health they were slower getting things done this month but they are sending out more than they are taking in.

Marlin Weisheit asked Jeff Valiant if it looks like they are gaining ground.

Jeff Valiant said it is going slowly but surely. He said he isn't sure they have the new shredder hooked up yet. He said he has no idea what it looks like behind the building.

Marlin Weisheit said he goes by there every few weeks and it looks like they gaining.

Mrs. Rector said they have until February or March through the State.

Formal Complaint ~ Matt Quick ~ 1799 Metzger Road ~ OWNER OF RECORD: April Duncan ~ Junk Salvage Yard in an "A" Agriculture zoning district. Cease and Desist Notice and Notice to Appear sent 10/9/12.

Matt Quick was present.

The President called for a staff report.

Mrs. Rector said a formal complaint was filed September 28, 2012 stating *Trash is hauled in an open truck and ends up scattered all over the roadside. Property of Mr. Quick has open garbage on ground has full trucks of uncovered garbage that are not hauled off which attracts rodents and other varmints.* She said the Zoning Inspector went to the property October 1, 2012 and reported he found the complaint to be true and there is trash in the yard and misc. equipment, and animals and trucks and cars. Mrs. Rector said on October 1st, we sent a letter to the owner of record, April Duncan which came back saying she had moved with no forwarding address. She said at the meeting last month it was determined by this Board that she would send a cease and desist letter to Mr. Quick, who is the occupant of the residence. She said that letter was sent out

to both Mr. Quick and Ms. Duncan on October 9, 2012, informing them of the violation and that they were to appear at this meeting. She said Mr. Quick telephoned the office saying he would get the property cleaned up and she told him to do his best and to make sure to come to the meeting. She said he informed her that Ms. Duncan was his wife and she no longer lived at the residence. She said they forwarded this complaint to the Health Department and they have a letter from Aaron Franz, Health Department Administrator saying the only health hazard they found was the trash in the back of the truck and the remaining concerns are non-health hazardous, but he is willing to assist in any way to get this matter resolved. She added the Inspector went back to the property on November 7th and reports that some cleanup has been attempted but there is still a mess on the property. She said he went back to the property yesterday, November 12th saying he did not see much progress being made.

Mr. Quick said his son has brought in a bobcat and they hauled a bunch of stuff off today. He said they cleaned that old box bed up and hauled it off and there has been quite a bit of progress made.

Mrs. Rector said she is going by the photographs and the inspection reports done by the Zoning Inspector. She said she told Mr. Quick that the inspector would be coming out there a day or two before the meeting.

Mr. Quick said his son works nights and he is the one who got the bobcat and drives it and so they have to work around his schedule. He said the trash has been hauled off and pretty well cleaned up out there.

Guy Gentry said well they did a lot of work today then because from the pictures on November 12th it looks like there is quite a bit of stuff there. He asked Mr. Quick how long he thought it would take him to get it totally cleaned up.

Mr. Quick said he didn't know; it is kind of muddy right now and the bobcat doesn't work good in the mud. He said there really isn't much left except what is left in the back driveway.

Guy Gentry asked if the trucks that are loaded have they been dumped.

Mr. Quick said they have been except one. He said the black truck is his son's and they loaded it once and dumped it and now it is loaded again but they have it covered up with a tarp.

Mike Moesner asked where all this material is coming from they are hauling in, do they have a business.

Mr. Quick said it isn't a business, it is just, he didn't know. He said a lot of times he comes home and there is stuff laying there but there is no business running there.

Guy Gentry said that is what they are asking – do they haul trash off for someone else and then dump it at their place.

Mr. Quick said if he did that he would take it to the dump.

Mrs. Rector said the complaint says they are hauling in trash.

Mr. Quick said he hasn't been there for a long time because he and his wife split up and he hated to go back. He said right now him and his two sons are living there. He said his son Chris is with him tonight and his Mom let him have the property. He said Chris is making the payments on the property but it is still in her name.

Mrs. Rector asked Attorney Doll to explain who is responsible for the property.

Attorney Doll said under the law, the property owner is also responsible, in addition to them as the occupant of the property. He said so if his son is becoming the property owner in the future by deed he may be coming into a mess where he would accept liability as the title holder. He said but until that happens, April Duncan is just as liable as they are to clean this up. He said if it went to court to get a court order to clean it up, the judge would place the order against him and Ms. Duncan and that could include a daily fine until it is cleaned up. He said that fine can be pretty stiff. He said it is in their best interest economically to really speed this up and get it done. He said that is why they were asking about how long it would take.

Mr. Quick said he didn't know.

Mike Moesner asked if he could get it done in a couple of months.

Mr. Quick said they could. He said he would like to say they could do it in a couple of weeks but....

Attorney Doll said what about until the end of the year.

Mr. Quick said they could have it done. He said it is just about done now because they hauled a bunch off today.

Mike Moesner asked for the date of the January meeting.

Mrs. Rector said the date is January 14th.

Mike Moesner said that is two full months. He asked if he thinks he can get is all done by that meeting.

Mr. Quick said it should be cleaned up there by then because there isn't much left now. He said there is just a little bit in the back.

Mrs. Rector said if the meeting is January 14th then she would send the Inspector to the property on January 11th. She said it would need to be cleaned up by January 11, 2013 in order for him not to have to come back before the Board.

Mr. Quick said he has two box beds out there but he is using them for storage houses. He said he has go-carts and tools in them. He said he has a deep freeze in there too and asked if they are alright.

Mike Moesner asked if they have doors.

Mr. Quick said they did and then asked if there is any law against him burning wood.

Mrs. Rector said he would need to talk to the Health Department because they are over burning.

Mr. Quick said his neighbor burns all the time.

Mrs. Rector said he needs to check with the Health Department for sure but one time before when she asked she was told you could burn things as long as it didn't bother anyone. She said but if someone drives down the road and calls about the smoke the Health Department will shut it down. She said of course if there is a burn ban you can't burn at all.

Guy Gentry said it would also be best to talk to the Fire Department as well so they know he is burning.

Marlin Weisheit said burning construction wood and rail road ties is a problem but if it is clean wood, fire wood, brush or yard waste you are usually okay. He said the problem is when you throw stuff on top of the fire just to get rid of it – things like treated lumber, building materials or tires then you will have a problem.

Marlin Weisheit then made a motion to grant Mr. Quick sixty days to finish cleaning up the property with the understanding that if this happens again they won't be as lenient. He said they don't want this to be an ongoing problem and they want the property maintained. He said he said he would personally be okay with the box trailers there as storage if they are maintained and stuff isn't piled around them. He said there shouldn't be any abandoned vehicles there either and said they have a lot of clean up left to do.

Mr. Quick said all of those vehicles run.

Marlin Weisheit said if they are licensed and they run they are fine.

Mr. Quick said the red and white pickup doesn't have a license on it yet but it is for his other son who is going to get his license soon. He said he did have it licensed and insured but he took it off and put them on another truck.

Marlin Weisheit said the law says they are abandoned vehicles if they are not operational and licensed.

Mr. Quick said it runs.

Attorney Doll said it has to be plated.

Marlin Weisheit said they just want him to know what the law says and so he shouldn't start piling a bunch of vehicles around there.

Mr. Quick said he has a whole bunch of neighbors who don't have vehicles insured; he said they should just drive up and down the road. He said he has some tractors out there too.

Marlin Weisheit said they don't have to be licensed.

Guy Gentry said asked if the motion was also to have the Inspector visit the property on January 11, 2013 before the meeting on January 14, 2013.

Marlin Weisheit said that was his intent.

Guy Gentry called for a second. Mike Moesner seconded.

Dan Wolfe asked if could speak. He said he is the one who filed the complaint and they have a trash hauling business. He said they need to either cover the truck or put sides on the truck because he is tired of picking up the trash along the road.

Mr. Quick said he doesn't; his son does.

Attorney Doll asked if that son lives there.

Mr. Quick said he did.

Dan Wolfe said they need to cover the truck because he is not going to pick up any more garbage. He said they need sides and a gate on the truck. He said he owns the property to the north and west of this property.

Attorney Doll asked if he is testifying that trash is being hauled into this site and dumped.

Dan Wolfe said sometimes he hauls it off and sometimes he doesn't. He said sometimes he puts it on a truck and sometimes he goes through it; they have a recycling center on Metzger Road.

Mr. Quick said no they don't.

Attorney Doll said apparently it is going there and staying for a long time. He told Mr. Quick he cannot operate a trash transfer station or a junk yard or anything on this site.

Mr. Quick said he knows that unless it is zoned M-2.

Attorney Doll said that is a great way to get to meet the Judge and he won't like that and he doesn't want to, but if the Board directs him to do so he will. He said right now is his opportunity to come into compliance and everybody can live together and get along but the law is the law and they all have to live by it.

Dan Wolfe said they can stop this right now. He said if Mr. Quick remembers he gave him an opportunity about six months ago when he told him he wouldn't put up with this anymore and so now here they are.

Chris Quick said he thinks most of this started because Mr. Wolfe wanted to buy the property from his Mom but she gave it to him instead and let him take over the payments. He said after that Mr. Wolfe started this.

Attorney Doll said he is welcome to own property and is glad that sometime he may get title to it but he has to live by the same rules as everybody else in the County.

Chris Quick said he knows but he is just saying.

Marlin Weisheit said if they do pick trash up, whether they have a business or not, they take it straight to the dump; don't even take it home. He said they also have it tarped while going down the road or they will get a fine for littering.

Dan Wolfe said they don't even have sides on the truck. He said the truck is outside right now and the trash falls out of the gates.

Guy Gentry said they say this isn't a business and can't be a business unless it is zoned properly. He said an "M-3" zoning probably won't happen out there and so there probably is no sense in even trying so whatever they are doing out there they need to stop. He said if he or his son is picking up trash from other places it needs to go straight to the dump. He said there is a motion and second on the floor that it is cleaned up by January 11, 2013; otherwise they will probably visit the Judge.

Mrs. Rector said so they all understand if they take them to court, the Judge can fine them \$300 per day and there are liens put on the property and they will send the County Highway Department out to clean up everything out of the yard and take it to the landfill and those charges are placed against the property. She said those liens are on the property forever until they are paid off. She explained those charges will be against the mother and they need to realize she will be in front of the Judge along with Mr. Quick. She said they shouldn't want their mother going through that either.

Discussion ensued over who ran the route with it being determined it was Chris Quick.

Attorney Doll asked Chris if he understands that he can't bring the trash back to the property.

Chris Quick said alright.

Guy Gentry said there is a motion and second on the floor. The motion carried unanimously.

ZONING DETERMINATIONS

Winery

Mrs. Rector said they do not have a winery as a listed use in the ordinance and as they know they have become very popular in this area. She said she wants to get some ideas and put it in the ordinance. She said this isn't something they have to do tonight. She said her idea was

depending on size and if you are making and distributing it would be in an “M” but then would it need commercial, the same as a bar. She said but just growing the grapes is agriculture zoning. She said Attorney Doll has some ideas regarding this as well.

Attorney Doll said they could deal with it by volume. He said Monroe County has probably let the State in the development of the wine industry and so he suggests they check with Monroe County and take a look at how they did it. He said this is a growing industry in Indiana and Oliver Winery started it off. He said if they table this to next month he and Mrs. Rector can check to see how Monroe County does it and they can make some recommendations. He said it seems to him they need to figure out how to have a wine tasting room – where they really don’t sit there and drink – but just taste wine at a winery that might be located at a vineyard. He said they have to figure out if there is some way they can all be happy with a zoning.

Guy Gentry said there may be entertainment at some of these too. He said Spencer County has a winery too and asked if they have a Zoning Board.

Mrs. Rector said they have one but you have to make an appointment; they don’t have full time employees.

Attorney Doll said they need to figure out how to do this in a friendly way but a wine tasting room is not like a bar. He said in a wine tasting room you get a sip and they hope to sell you a bottle for you to take with you.

Mrs. Rector said in looking at this they also need to look at micro-breweries as well.

Domesticated animals

Mrs. Rector said there was a complaint filed about a pony in someone’s back yard in Stonegate Subdivision on Bell Road. She said she was going through the ordinance and they have always said you can’t have livestock in a residential subdivision but the ordinance doesn’t say or refer to livestock and when you look up the definition of domesticated animals that can be a cow or horse or pig or cat or dog. She said she spoke with Amanda Mosiman about this and they went online to the Indiana regulations and she was trying to get them printed out today but the internet has been down all day. She said she would like to continue this as well. She said she has spoken to Attorney Doll and Guy Gentry and she wants to get this cleared up because it says you can have domesticated animals in agriculture and that is all it says and so if she would tell someone they couldn’t have that pony they would say it is domesticated.

Marlin Weisheit said you would think the subdivision would have covenant that would cover that.

Mrs. Rector said some of the older ones don’t have home owners associations. She said the pony is now gone but they need to take care of this.

ATTORNEY BUSINESS:

None.

EXECUTIVE DIRECTOR BUSINESS:

None.

Being no other business the meeting adjourned at 6:35 p.m.

Guy Gentry, President

ATTEST:

Sherri Rector, Executive Director